



DEFENSE LOGISTICS AGENCY
DEFENSE LOGISTICS SUPPORT COMMAND
8725 JOHN J. KINGMAN ROAD, SUITE 2533
FORT BELVOIR, VIRGINIA 22060-622,

SEP 11 1999

IN REPLY
REFER TO

DLSC-P
PROCLTR 99-1 I

MEMORANDUM FOR PROCLTR DISTRIBUTION LIST

SUBJECT: DLAD 17.91, Use of Public Manufacturing

The purpose of this PROCLTR is to provide revised guidance at [DLAD 17.91](#), Use of Public Manufacturing (Attachment). This subpart provides guidance on the placement of project orders with public manufacturers (i.e., DoD owned and operated activities) when no viable commercial source is available. This change is necessitated in part by DoD's introduction of DoD Financial Management Regulation (FMR) 7000.14-R, Volume 11A as the primary guidance on Public Manufacturing. The principal changes align DLA's required documentation and procedures with FMR requirements. The revised guidance also allows for wider field activity discretion in the acquisition approach while still maintaining a consistent DLA format baseline.

This PROCLTR is effective immediately and expires upon Incorporation into the DLAD. Please contact Frank Pane, DLSC-PPP, at 703-767-1461, or e-mail francis_pane@hq.dla.mil, if you have any questions.


WILLIAM J. KENNY
Executive Director
Procurement Management

Attachment



SUBPART 17.91 USE OF PUBLIC MANUFACTURERS

17.9100 Scope of subpart.

This subpart prescribes policies and procedures for the soliciting from and placing project orders with public manufacturers. This subpart does not address procedures for conducting public-private competition (i.e. OMB Circular A-76). Authority for this section is 41 U.S.C. 23. This section provides additional guidance to that found in DoD Financial Management Regulation (FMR) 7000.14-R, Volume 11A. The contracting officer should review and be knowledgeable of this FMR to ensure all provisions of public manufacturing are met.

17.9101 Definitions.

"Project Order Memorandum of Agreement (POMOA)" is an agreement between a Defense Supply Center and a public manufacturer that establishes the basic terms and agreements for any subsequent project orders placed against that POMOA, whether issued by the same Center, or another Defense Supply Center. The POMOA, in itself, is not a project order.

"Project Order" is a specific, definite, and certain order issued under the authority of 41 U.S.C. 23 for the manufacture of materials, supplies and equipment, or for other work or services which, when placed with and accepted by a separately managed DoD establishment, serves to obligate appropriations in the same manner as orders or contracts placed with private sector enterprises. As used in this part, it is the obligation instrument used to "contract" with a public manufacturer, and may be a streamlined order placed against a POMOA, or may be a "stand-alone" obligation instrument.

"Public Manufacturer" is a DOD owned and operated establishment, including, but not limited to, equipment overhaul or maintenance shops, manufacturing or processing plants or shops, research and development laboratories, computer software design activities, testing facilities, and proving grounds.

"Public Sector Bidders List (PSBL)" is a bidders list consisting of the names and CAGE codes of public manufacturers available for use by the Agency, the Federal Supply Classes they are capable of supporting, and identification of part numbers/National Stock Numbers of items previously manufactured.

"Rough Order of Magnitude (ROM) Estimate" is an informal request for approximate cost, price and availability information from a public manufacturer. The ROM estimate is used to determine whether the public manufacturer can meet agency requirements for an item, without burdening the public manufacturer with the cost of preparing a detailed proposal.

17.9102 General policy.

(a) The Defense Logistics Agency relies on the private sector as the primary source of supply for required material and services. However, public manufacturers will be solicited when the private sector cannot meet Agency requirements, or where using the public sector meets the intent of laws providing direct access (e.g., Army Arsenal Act (10 U.S.C. § 4532)).

(b) Only Contracting Officers shall award "stand-alone" Project Orders or POMOAs. However, if an order is placed against an existing POMOA, the order may be placed by an authorized Ordering Officer. POMOAs shall define authorized ordering officers (if any). Contracting offices shall use similar business systems and practices for public and private sectors. Contracting personnel are responsible for issuing the ROM request, Request for Quote (SF-18 or similar form), and award document; entering the project order into the DLA Contract Action Reporting System (DCARS); and performing/delegating post award functions. Supply, Technical, and Quality functional activities will be the same as used for private sector acquisitions to the maximum extent possible.

(c) Contracting officers shall ensure that quality assurance provisions consistent with private sector vendor requirements are contained in the award document. For example, if a certificate of conformance is required from a private sector manufacturer for an item (or for an equivalent item in the case of a first time Agency acquisition), the same will be required from the public manufacturer. Similarly, if DCMC would be tasked to perform source inspection at a private manufacturer's plant, DCMC should provide the same service at the public manufacturing facility. These provisions will be clearly specified in any issued project order. Additionally, Configuration Control measures will be consistent with private sector procurements.

17.9103 Conditions for use.

Public manufacturer(s) should be solicited when:

(a) No responsive/technically acceptable offers from a responsible private sector source are received in response to a solicitation. The determination that the offer is unacceptable requires contracting officer consideration of several factors, including the urgency of need, the potential that an acceptable agreement could be obtained through negotiations, and the possibility of breaking out non-urgent quantities for a private sector award. A private sector response may be considered unacceptable if any of the following unresolvable conditions exist:

(1) The offeror can not meet the required delivery date (RDD).

(2) The proposed price is considered unreasonable (or not fair and reasonable under the circumstances in accordance with DLAD 15.405(a)(90)). Caution must be exercised to ensure that a project order is not subsequently issued at a price exceeding the price found unreasonable in the private sector. However, the contracting officer may determine that it is in the government's best interest to issue a project order under these circumstances if: (a) the public manufacturer's price includes one-time startup costs, (b) there is a recurring demand for the item, and (c) subsequent prices for the item are anticipated to be lower than the unreasonable private sector price. Such determination must be in writing and approved by the head of the contracting activity. This approval authority may be delegated to the Chief of the Contracting Office. Note that these same considerations should be applied to private sector quotes as part of the price reasonability determination.

(b) If an item has never been acquired from the private sector as a result of being designated for public manufacture under the authority of the Army Arsenal Act (10 U.S.C. § 4532) or similar Military Department authorities, the contracting officer may continue to rely exclusively on a public manufacturer as the source of supply (this situation may exist for a large number of items to be acquired as Numerical Stock Objective (NSO) or "insurance" items).

17.9104 Limitations on use.

Project orders may be issued only to DoD owned establishments that have been given the authority to operate a reimbursable program in an amount equal to or exceeding the project order amount(s). Additionally, project orders shall be issued only to those DoD owned and operated establishments that are capable of substantially performing the work ordered (i.e., the project order recipient should incur costs of not less than 51% of the total costs attributable to rendering the work or services ordered). The contracting officer should ensure that applicable restrictions of DoD Financial Management Regulation 7000.14-R, Volume 11A are met. Additionally, acquiring activities shall obtain a letter signed by the public manufacturers Commander/Director or authorized designee specifying who is authorized to accept a project order on behalf of the public manufacturer.

17.9105 Solicitation procedures.

When an applicable condition of paragraph 17.9103 is satisfied, the following procedures shall be used in soliciting public manufacturers:

(a) A Rough Order of Magnitude (ROM) estimate should be requested, rather than a firm proposal, when the public sector estimate is required only to assist in the acquisition decision making process. To prevent the incursion of unnecessary proposal costs, public sources should not be solicited for a firm proposal unless there is a high probability that a project order will be issued. Following review of the ROM estimate, if the acquiring activity determines that the public manufacturer is likely to be capable of meeting Agency needs, a Request for Quote (SF-18) or similar form consistent with agency procedures for soliciting private sector quotes should be issued to obtain a firm proposal.

(b) Public manufacturers may be solicited concurrently with private sources if the Contracting Officer believes that acceptable offers will not be submitted by the private sector. The purpose of concurrent solicitation is to reduce lead-time; it is not a public-private competition. Either a ROM or Request for Quotations may be requested from the public manufacturer, depending on the likelihood of issuing a project order. The public manufacturer must be made aware of the fact that the private sector is being solicited concurrently, and that the private sector will receive the award if an acceptable offer is received (see 17.9103).

(c) All public manufacturers that have indicated an interest in the Federal Supply Class as shown in the Public Sector Bidders List (PSBL) should be solicited, except in the following circumstances:

(1) Solicitation may be limited to a specific manufacturer when that manufacturer has previously made that exact item.

(2) When an acquisition is being made for an item designated solely for public manufacture (see 17.9103(b)), only public manufacturers from the "requiring Service" shall be solicited. For example, Navy shipyards or depots shall not be solicited for the manufacture of an item with an Army system application designated for public manufacture pursuant to the Army Arsenal Act (10 U.S.C. § 4532), regardless of their capability to manufacture the item.

(d) A special Commerce Business Daily notice (see 5.205(c)) shall be published annually to solicit private sources interested in furnishing items that have been previously supplied by public manufacturers. The contracting officer shall ensure that viable potential sources identified through the CBD notice are solicited for future requirements. In addition to the CBD, the publication of notices in trade publications, industry journals, etc., is encouraged as a method of locating potential sources. After an item has been acquired from the public sector for the reasons delineated in 17.9103(a), or if previous solicitations of the private sector have been unsuccessful, and if no response is received to the required CBD notice, there is no requirement to resolicit the private sector prior to soliciting public manufacturers for subsequent requirements.

17.9106 Evaluation of Public Manufacturer Offers.

Public manufacturer offers, including price reasonableness, shall be evaluated for project order issuance in the same manner as private sector offers.

17.9107 Assignment of project orders.

DoD Financial Management Regulation 7000.14R, Volume 11A, REIMBURSABLE OPERATIONS, POLICY AND PROCEDURES, provides the primary guidance for the issuance and acceptance of project orders. The following is provided as implementing guidance for issuing Agency project orders to public manufacturers:

(a) The establishment of a Project Order Memorandum of Agreement (POMOA) is the preferred method for establishing the common terms and conditions for project orders issued by DLA contracting offices to public manufacturers. DLSC-PRT shall designate lead Supply Centers to execute POMOAs with designated public manufacturers. These POMOAs shall be reviewed by appropriate Legal, Contracting, and Financial representatives for sufficiency. Following the execution of a POMOA, the lead Supply Center shall provide a copy of the POMOA to all other DLA Supply Centers. This POMOA shall be used by all DLA Supply Centers. In order to standardize business relationships and procedures, all POMOAs should share a common baseline. [Consistent with this, Centers shall use the POMOA format identified in DoD 7000.14-R, Volume 11a, chapter 2, addendum 3.] In addition to the elements identified in addendum 3, POMOAs shall also address:

- (1) Applicable project order acceptance/quality assurance/delivery procedures;
- (2) Project order modification procedures (note: project orders may be changed or increased as long as proper funding is available, and the new work otherwise meets the general conditions governing issuance and acceptance of project orders identified in DoD 7000.14-R, Volume 11A);
- (3) Project order default procedures;
- (4) Center Senior Procurement Officials are delegated the authority to authorize activities to include additional provisions as necessary (i.e., First Article Approval, etc.).

(b) Project orders may be issued as an order under an existing POMOA (see paragraph (a) of this section), or may be issued as a "stand-alone" obligation instrument. "Stand-alone" project orders may be utilized if 1) no POMOA exists and the anticipated total ordering requirement from that public manufacturer does not warrant the development of an POMOA (e.g., repetitive requirements are not anticipated), or 2) no POMOA exists and operational customer needs preclude the development of an POMOA for the immediate requirement (in this case, if additional requirements are anticipated, a POMOA should subsequently be established in a timely fashion to preclude multiple stand-alone orders for the same or similar items being placed). Project Orders shall be specific, definite, and certain as to the work encompassed by the order and the terms of the order.

themselves. Project orders should be issued substantially in the format of that shown in the Universal Order Format identified in DoD 7000.14-R, Volume 11A, chapter 2, addendum 4. Equivalent forms may also be utilized to accommodate DPACS or local procedures (i.e., DD Form 1155, SF 33, etc). For stand-alone project orders, Contracting Officers shall ensure essential elements of the data contained in the specified POMOA format (paragraph (a) of this section) are incorporated in the stand-alone project order.

(c) Procurement Instrument Identification Numbers (PIIN). PIINS shall be assigned to POMOAs and the Project Orders issued against them, and shall also be assigned to all "stand-alone" project orders. PIIN numbering shall comply with DFARS 204.7003 and DFARS Appendix G.

(d) Defense Contract Management Command (DCMC) support. In the event that a project order requires DCMC to provide quality assurance, a copy of the project order shall be provided to the applicable Defense Contract Management Command (DCMC) Office at the time of issuance.

(e) Use of data in project orders. Activities shall ensure that any technical data utilized during the performance of project orders is used consistent with the Government rights associated with that data in accordance with FAR Part 27.

(f) Reporting.

(1) Project orders issued to the public sector shall be recorded in the DLA Contract Action Reporting System (DCARS). To report these actions on the DD Form 350, code the form the same way contract award DD Form 350s are coded, except assign code "4" to Block B7, Type Obligation.

(2) Public manufacturers' quality, cost and schedule performance shall be tracked using the same Automated Best Value System (ABVS) system used to track private sector companies. This information shall be used when evaluating public manufacturers for project orders.

(g) Records Retention.

Contract files for project orders shall be maintained in accordance with FAR 4.7.